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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,344	09/15/2000	Morteza Gharib	06618/512001/CIT3076	9987
20985	7590	04/26/2004	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			PATIDAR, JAY M	
			ART UNIT	PAPER NUMBER
			2862	

DATE MAILED: 04/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/838,344	<b>Applicant(s)</b> GHARIB ET AL. 
	<b>Examiner</b> Jay M. Patidar	<b>Art Unit</b> 2862

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
   
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
   
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
   
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 27 January 2004.
   
 2a) This action is FINAL.                    2b) This action is non-final.
   
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-16 and 18-37 is/are pending in the application.
   
 4a) Of the above claim(s) 26-37 is/are withdrawn from consideration.
   
 5) Claim(s) \_\_\_\_\_ is/are allowed.
   
 6) Claim(s) 1-16 and 18-21 is/are rejected.
   
 7) Claim(s) \_\_\_\_\_ is/are objected to.
   
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.
   
 10) The drawing(s) filed on 15 September 2000 is/are: a) accepted or b) objected to by the Examiner.
   
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
   
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   
 a) All    b) Some \* c) None of:
   
 1. Certified copies of the priority documents have been received.
   
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
   
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
   
 \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/23/2001</u> .	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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1. This communication is in response to applicant's amendment received on January 27, 2004.
2. The abstract of the disclosure is objected to because the abstract does not set forth the nature and gist of the invention.

Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because of the following informalities: There is no brief description of figures 6A, 6B and 7, it is not clearly defined as to what is the purpose of having alignment marks on the substrate.

Appropriate correction is required.

4. The drawings are objected to because (1) there are texts on page 1; (2) Figure 4 is not clear, cannot see all elements.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 140 in fig. 3 (page 5, line 21). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. Claims 1-16,18-21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, at line 4, “produce” should be ---produces---; it is vague as to what is a “scattering element” and how it scatters the fringe beam *based on particles*; how a diffractive element produces a fringe; where such elements are located;

In claim 4, it is unclear as to what the detector is indicating;

In claim 5, “elements in registration with one another” is not clear;

In claim 7, the phrase “substrate is less than a 1000 microns *on each side*” is not clearly understood;

In claim 9, it is unclear as to how all elements e.g. first surface in contact with particles; a diffractive element; interference fringes; a second diffractive elements are on one side of the substrate; how received light is monitored;

In claim 13, what positive structures are;

In claim 14, how a laser diode emits light from a top of the housing since there is a substrate between the top of the housing and the laser;

In claim 15, "laser beam" should be ---laser--- at line 4;

In claim 19, it is unclear whether particles are illuminated by a photodiode or a laser; how interference is detected; how particle flow is detected; the scope of the claim is not clear from the language of the claim;

In claims 20-21, it is vague as to how shear stress or particle size is determined; what type of information is used to determine either size or shear stress of particles.

The claims not specifically addressed share the indefiniteness as they depend from rejected base claims.

7. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: e.g. a laser, transparent substrate, diffractive elements, photodiode for collecting light, etc.

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 3,4,9,14,15,19-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 45,47 of U.S. Patent No. 6,717,172. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of above indicated claims is inherently claimed in claims 45 and 47. Claims 3-4,9,14-15,19-21 encompass the boundaries of the claims 45 and 47.

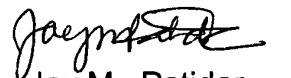
9. Applicant's arguments with respect to rejected claims have been considered but are moot in view of the new ground(s) of rejection.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jay M. Patidar whose telephone number is 571-272-2265. The examiner can normally be reached on M-Thur 7:00-5:30.

The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jay M. Patidar  
Primary Examiner  
Art Unit 2862

April 21, 2004